

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**Jamie Dyer,**

**Plaintiff,**

**v.**

**Commissioner of Social Security,**

**Defendant.**

**Case No. 2:17-cv-1005**

**Judge Michael H. Watson**

**Chief Magistrate Judge  
Deavers**

**OPINION AND ORDER**

On February 12, 2019, Chief Magistrate Judge Deavers issued a Report and Recommendation ("R&R") recommending the Court overrule Plaintiff's Statement of Errors and affirm the decision of the Commissioner of Social Security. R&R, ECF No. 25. Plaintiff objects. Obj., ECF No. 26.

When a party objects to an R&R within the allotted time, the Court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); see also Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

Plaintiff objects solely to Magistrate Judge Deavers' conclusion that the ALJ properly weighed the opinion of Plaintiff's treating physician, Dr. Charles Kistler. Obj., ECF No. 26. Plaintiff contends "the ALJ did not provide good and


acceptable reasons for giving less than great weight to the treating physician's opinion," and contends that neither the fact that Plaintiff cared for children nor her post-surgery hospital discharge summary warrant affording Dr. Kistler's opinion less than great weight. *Id.*

The Court has reviewed *de novo* the record, the R&R, and Plaintiff's objections and agrees with the Magistrate Judge's recommendation. The ALJ gave good reasons for assigning little weight to Dr. Kistler's opinion, including the fact that Dr. Kistler's opinion was "not consistent with the record." ECF 8-2 at PAGEID # 78. Dr. Kistler's opinion was issued on July 22, 2016---several days before Plaintiff had back surgery to address the lumbar stenosis with radiculopathy that partially supported many of Dr. Kistler's opined restrictions. The discharge summary from that surgery shows that Plaintiff postoperatively had 5/5 motor capability bilaterally in her lower extremities, denied leg pain, and was told to increase her physical activity. ECF No. 8-8 at PAGEID # 1179. Plaintiff's postsurgical status is probative evidence, even without containing a specific RFC opinion, see Obj. 3, ECF No. 26, and it undermines Dr. Kistler's opinion.

Moreover, Dr. Kistler's opinion was inconsistent with Plaintiff's activities of daily living, as noted by both the ALJ and Chief Magistrate Judge Deavers. The cases Plaintiff cites with respect to the ADL analysis are inapposite.

The Court **OVERRULES** Plaintiff's objections, **ADOPTS** the R&R, and **AFFIRMS** the Commissioner's decision. The Clerk shall enter final judgment for Defendant and terminate this case.

**IT IS SO ORDERED.**

  
**MICHAEL H. WATSON, JUDGE**  
**UNITED STATE DISTRICT COURT**